December 3, 2003

Marlene H. Dortch Secretary Federal Communications Commission TW-A325 445 Twelfth St., SW Washington, DC 20554



Re: *Notice of Ex parte* presentation in WT Docket No. 03-66 ET Docket No. 02-380

Dear Ms. Dortch:

On December 2, 2003, Harold Feld, Associate Director, Media Access Project, and J.H. Snider, Senior Research Fellow, New America Foundation, met with Ed Thomas, Chief, Bruce A. Romano, Associate Chief, Bruce A Franca, Deputy Chief, and Alan Stillwell, Senior Associate Chief, OET. Also present were Karen Rackley, Chief, and Hugh Van Tuyl, Senior Engineer, of the Technical Rules Branch.

Mr. Feld and Mr. Snider generally repeated the talking points filed in previous notices *oral ex parte* presentations and summarized the position of NAF, *et al.* in ET 02-380.

With regard to WT 03-66, Mr. Thomas asked if extending the underlay would have significant impact on the congestion issues raised. Mr. Feld and Mr. Snider replied that it would provide time for newer technologies to develop to deal with the congestion issues effectively.

With regard to ET 02-380, FCC staff asked how consumers would know about increased risks of interference to their television reception from use of unlicensed devices, and did the Commission have an obligation to consider how to educate consumers. Mr. Snider answered that ultimately, the choice lies with the consumer whether they consider the potential interference acceptable. Consumers have already adjusted to interference of unlicensed devices with each other, such as cordless phones, baby monitors, and home networks. Furthermore, the marketplace will respond with equipment better capable of handling potential interference risks.

Staff also asked if permitting unlicensed spectrum would interfere with the FCC's obligation to auction analog broadcast spectrum. Mr. Feld replied that it would not. Section 3002(c)(1)(C)(v) is designed to protect consumer devices already authorized under Part 15 in 1997. It says nothing about subsequent authorizations. In response to whether the Commission should consider the reduction in auction value of an underlay, Mr. Feld replied that Section 309(j)(7)(A) and (7)(B) prohibit the Commission from basing public interest determinations on maximizing federal revenue.

In accordance with Section 1.1206(b), 47 C.F.R. § 1.1206, this letter is being filed electronically with your office today.

Respectfully submitted

Harold Feld Associate Director Media Access Project

cc: Ed Thomas
Bruce Franca
Alan Stillwell
Bruce A Romano
Karen Rackley
Hugh Van Tuyl